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United States of America  
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11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 )  
14 UNITED STATES OF AMERICA, )

15 Plaintiff, )

16 v. )

17 FE S. GARRETT )

18 Defendant. )  
19 )  
\_\_\_\_\_ )

Criminal Case No. 08CR0918-L

GOVERNMENT'S *EX PARTE* MOTION  
FOR AUTHORIZATION TO DISCLOSE  
GRAND JURY MATTER AND FOR A  
PROTECTIVE ORDER

20 The United States of America, by and through Karen P. Hewitt, United States Attorney,  
21 and Charles A. O'Reilly and Christopher S. Strauss, Special Assistant United States Attorneys,  
22 hereby moves the Court ex parte for (1) authorization to disclose grand jury matter to the defense  
23 team in the above-captioned case, and (2) a protective order to safeguard such grand jury matter  
24 from disclosure to persons outside of the defense team. This motion is based upon the files and  
25 records of this case and the argument set forth below.

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1 As grounds for this motion, the government states as follows:

2 I

3 ARGUMENT

4 A. DISCLOSURE OF GRAND JURY MATTER

5 As part of its statutory and Constitutional obligations to provide discovery in this case, the  
6 Government may be required to disclose to the defendant grand jury matter which the attorney for  
7 the Government is otherwise prohibited from disclosing under Rule 6(e) of the Federal Rules of  
8 Criminal Procedure. For purposes of this motion, “grand jury matter” refers to (1) transcripts of  
9 testimony before the grand jury, and (2) documents or objects marked as grand jury exhibits.

10 To the extent that the attorney for the Government intends to disclose grand jury matter,  
11 and to the extent that prior court authorization is needed to comply with both the Government’s  
12 discovery obligations and with Rule 6(e), the Government hereby moves for authorization to  
13 disclose such grand jury matter, together with a protective order as described below. Nothing in  
14 this motion or in the court’s authorization should be construed as enlarging the Government’s  
15 discovery obligations or creating any right to material not otherwise discoverable, as determined  
16 by the Government or as directed by the court.

17 B. PROTECTIVE ORDER

18 This court has the power to issue “protective and modifying orders” regulating discovery.  
19 Fed. R. Crim. P. 16(d)(1). Specifically, “[a]t any time the court may, for good cause, deny,  
20 restrict, or defer discovery or inspection, or grant other appropriate relief. Id. See Alderman v.  
21 United States, 394 U.S. 165, 185 (1969) (“the trial court can and should, where appropriate, place  
22 a defendant and his counsel under enforceable orders against unwarranted disclosure of the  
23 materials which they may be entitled to inspect”).

24 Here, the disclosure of grand jury matter should be limited to only those individuals who  
25 are personally and directly involved in preparing the defense and trial of this criminal case and for  
26 no other purpose. Consequently, the Government moves for a protective order to safeguard the  
27 grand jury matter from disclosure to persons outside of each defense team. For purposes of this  
28 motion, the “defense team” refers to the defendant; the defendant’s counsel of record, including

1 members, associates, paralegals and office staff of counsel of record's law firm; and investigators,  
2 experts and consultants hired by counsel of record to assist in the defense of this criminal case.

3 The protective order should:

- 4 1. Prohibit the members of the defense team from distributing, disseminating,  
5 disclosing or exhibiting grand jury matter to any person who is not part of that defense team and  
6 for any purpose other than preparing a defense of this case;
- 7 2. Require each counsel of record to ensure that every member of the defense team is  
8 advised of the protective order and has agreed to be bound by its terms;
- 9 3. Require that if, in the course of preparing the defense in this case, counsel of record  
10 or any member of the defense team needs to disclose grand jury matter to any person outside of the  
11 defense team (such as to a third-party witness), counsel of record must obtain prior written  
12 authorization from the court, with such authorization to require that any such person to whom  
13 grand jury matter is disclosed agree to be bound by the terms of this protective order;
- 14 4. Require that if disclosure of grand jury matter to a person outside the defense team  
15 is authorized by the court, that the grand jury matter be only shown to, and not left with, such  
16 person, and that the grand jury matter must remain in the custody and control of the defense team;  
17 and
- 18 5. Require that at the conclusion of the proceedings in this case, counsel of record  
19 shall return to the Government, upon request, any grand jury matter disclosed.

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II

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the court issue the attached order authorizing the attorney for the Government to disclose grand jury matter to the defendant or his counsel of record and prohibiting each defendant's defense team from disclosing such grand jury matter except as otherwise permitted in the order.

DATED: April 16, 2008

Respectfully submitted,

KAREN P. HEWITT  
United States Attorney

/s/ Charles A. O'Reilly  
Charles A. O'Reilly  
Special Assistant United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FE S. GARRETT,

Defendant.

Case No. 08CR0918-L

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Charles A. O'Reilly, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of GOVERNMENT'S *EX PARTE* MOTION FOR AUTHORIZATION TO DISCLOSE GRAND JURY MATTER AND FOR A PROTECTIVE ORDER on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Erica Kristine Zunkel  
Federal Defenders of San Diego  
225 Broadway, Suite 900  
San Diego, CA 92101  
[Erica.Zunkel@fd.org](mailto:Erica.Zunkel@fd.org)

I declare under penalty of perjury that the foregoing is true and correct.

DATED: April 16, 2008

/s/ Charles A. O'Reilly  
Charles A. O'Reilly  
Special Assistant United States Attorney